



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,255	03/05/2007	Nathaniel Gordon Hilary Lucas	FISHER-Z-PCT-US	9745
28862	7590	07/19/2011		
HUDAK, SHUNK & FARINE, CO., L.P.A. 2020 FRONT STREET SUITE 307 CUYAHOGA FALLS, OH 44221			EXAMINER LEFF, STEVEN N	
			ART UNIT 1782	PAPER NUMBER
			MAIL DATE 07/19/2011	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/574,255	<b>Applicant(s)</b> LUCAS ET AL.	
	<b>Examiner</b> STEVEN LEFF	<b>Art Unit</b> 1782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2011.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11 and 21-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

- Claims 22-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The application does not appear to disclose the subject matter of claims 22 and 23, specifically with respect to "after the chocolate is allowed to set, further trimming the mould plate". Though the application teaches "trimming" and more specifically "trimming the mould plate" at par. 0146-0151, of applicants pre-grant specification, the teaching of "trimming" after the chocolate is allowed to set is not disclosed in applicants specification since the forming of the mold plate is completed prior to manufacture of the chocolates (par. 0150 and 0159-0160).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claims 22-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - Claims 22 and 23 are rejected due to the phrase "after the chocolate is allowed to set, further trimming the mould plate to enable a coloured chocolate border of the same or different colour to be formed" since it is unclear if the "further trimming" is with respect to trimming of the mold plate while the chocolate is actually within thus trimming both the mould and the chocolate "to enable a coloured chocolate border", if the trimming is with respect to after removing a first batch of chocolate, further trimming the mould plate "to enable a coloured chocolate border" in subsequent moldings or since the first and second chocolate are already "set" if the phrase is with respect to further "trimming" the

mould “to enable” a third chocolate to be formed around the first and second chocolates or just the first chocolate which have set.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- Claims 11 and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Lucas et al. (WO 97/39636).

Lucas et al. teach a method of manufacturing chocolates. More specifically with respect to claims 11 and 21, Lucas et al. teach obtaining a graphics plate by engraving a plurality of images (pg. 4 lines 22-25), corresponding to the design, on a graphics plate at preselected locations (pg. 4 lines 22-25), applying chocolate of at least a first color to the graphics plate to fill the engraved image thereon to form the design (pg. 5 lines 16-19), and removing any excess chocolate (pg. 5 lines 20-21), locating a mold plate on the graphics plate with the recesses in the mold plate in register with the designs of the at least first color chocolate (pg. 5 lines 22-25), filling the recesses with another color chocolate (pg. 5 lines 24-26), allowing the chocolate to set (pg. 5 lines 27-29), and removing the final chocolates from the mould plate (pg. 5 lines 29-30). With respect to claims 22 and 23, Lucas et al. further teach a mould plate to enable a colored chocolate border (fig. 3 ref. #22, col. 6 lines 16-17) of the same or different color to be formed around the negative image (fig. 3)

It is noted with respect to the producing of the mold plate former, which is then used to mold or with respect to claim 21 “obtaining” a silicon mold, which is then used to mold the chocolates, and specifically with respect to the steps of forming the former plate, having a planar surface bounded by a border corresponding to the external dimensions of the mold plate, by producing a plurality of former shapes, corresponding to

Art Unit: 1782

the recesses to be formed in the mold plate, locating the former shapes in a template operable to locate the former shapes on the former plate, applying adhesive to the former shapes, locating the former shapes on the former plate, using the template, to fix the former shapes to the former plate; producing a rubber mold plate-using the mold plate former by mixing a silicone rubber compound with a hardener to form a solution; applying a vacuum to the solution to remove at least the majority of the air bubbles in the solution, pouring a preset weight of the solution into a mold former, and allowing the solution to settle applying a clamping pressure to the mold assembly and allowing the silicone rubber to at least initially cure; and allowing the rubber to post cure before use.

These steps of manufacturing the former for a mold plate, including trimming the mould plate, are specific to the construction of the mold template, which is an intermediate device. Thus since these steps are used for construction of the mold for molding chocolates and since Lucas et al. teach the same device used to mold the chocolates, specifically an engraved graphics at preselected locations in a negative form, and a mold plate on the graphics plate with the recesses in the mold plate in register with the designs of the at least first color chocolate (pg. 5 lines 22-25) and forming a border (fig. 3), Lucas et al. teach all of the currently claimed method steps for producing chocolates.

### ***Response to Arguments***

With respect to applicants arguments that Lucas is silent to teaching obtaining a mould plate former which is used for molding of chocolates, it is initially noted that claims are drawn to a method of manufacturing chocolates and not the method of forming a mold preform. It is further noted that Lucas teaches applicants same claimed graphics plate and mould plate, where the steps of manufacturing of the former for a mold plate, including trimming the mould plate, are specific to the construction of the mold template, which is an intermediate device. Thus since these steps are used for construction of the mold for molding chocolates and since Lucas et al. teach the same device used to mold the chocolates, specifically an engraved graphics at preselected locations in a negative form, and a mold plate on the graphics plate with the recesses in the mold plate in register with the designs of the at least first color chocolate (pg. 5 lines 22-25) and forming a border (fig. 3), Lucas et al. teach all of the currently claimed method steps for producing chocolates.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Leff whose telephone number is (571) 272-6527. The examiner can normally be reached on Mon-Fri 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/

Primary Examiner, Art Unit 1782

/Steven Leff/

Examiner, Art Unit 1782